

DECISION



13652
PL-1
Ruzent
10

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-197451

DATE: May 5, 1980

MATTER OF: Rolfe Construction Inc.
4583

DIGEST:

Where bid fails to acknowledge wage rate determination addendum, failure cannot be waived as minor informality and bid is properly for rejection.

Protest Against

Rolfe Construction, Inc. (Rolfe) protests the rejection of its low bid in response to invitation for bids (IFB) No. SCS-1-UT-80, issued November 1, 1979, by the United States Department of Agriculture, Soil Conservation Service (SCS), for the construction of approximately 2,600 linear feet of irrigation pipeline and one concrete drop structure. Rolfe's bid was rejected for failure to acknowledge solicitation addendum No. 1, issued November 9, 1979, to advise prospective bidders of changes in the applicable wage rates. The addendum provided: "FAILURE TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WILL CAUSE REJECTION OF BID." *OLG 5/27/80*

Counsel for Rolfe contends that his client received the addendum and submitted it with the bid. Counsel also states that when his client picked up the bid package a representative of the contracting activity went over it item by item and especially indicated that the wage statement had to be signed and turned in as part of the bid. For these reasons, counsel "feels sure" Rolfe submitted addendum No. 1 with its bid; nevertheless, the company maintains it is "willing to resubmit a wage change acknowledgement, which [would] not change [the] bid."

The company further argues: (1) the bid opening officer did not report the lack of an addendum in Rolfe's bid at bid opening, but rather reported the

112236

~~010190~~

deficiency "7 or 8 days later," which circumstance "left lots of room for any unscrupulous employee * * * to have misplaced the wage statement"; and (2) another bidder also claims that SCS misplaced a bid page, thereby tending to confirm Rolfe's suspicion about the treatment of its bid.

SCS has replied to these allegations, as follows:

- (1) Rolfe's bid contained no evidence of acknowledgment of the addendum.
- (2) Rolfe's allegation that the lack of an addendum was discovered several days after bid opening is erroneous. The review which resulted in the bid rejection took place immediately after bid opening at the location of the opening. In any event, implications drawn from the facts surrounding Rolfe's receipt of the addendum and the opening of bids cannot be considered suitable evidence of Rolfe's commitment to the specified wage rates.
- (3) There is no evidence that SCS employees misplaced the missing addendum.

Our Office has held that failure to acknowledge an addendum to a solicitation which materially affects the IFB requires rejection of the bid. The failure to acknowledge an addendum containing a wage determination requires rejection of the bid as nonresponsive even when the bidder was already paying the specified wages. See Corner Construction Company, B-193107, November 7, 1978, 78-2 CPD 330; Electro-Coating, Inc., B-191240, March 10, 1978, 78-1 CPD 196. The reason for the rule is that acceptance of the bid would not result in a contract containing a statement of the required minimum wage rates to be paid. See Columbus Services International, B-191070, November 13, 1978, 78-2 CPD 338. Further, a bidder may not supply the required commitment to an addendum after bid opening

as this would be prejudicial to the bidders who properly acknowledged the addendum.

Concerning Rolfe's allegation of possible misplacement of the addendum, we find no probative evidence supporting the allegation.

Therefore, Rolfe's bid was properly rejected as nonresponsive, and its protest is denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States